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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

PROHBTD MEDIA, INC.) Case No. 2:18-CV-05593-JAK-SK
Plaintiff,)
) <u>DISCOVERY DOCUMENT:</u>
vs.) <u>REFERRED TO MAGISTRATE</u>
) <u>JUDGE STEVE KIM</u>
VMR PRODUCTS, LLC D/B/A V2)
CIGS, LLC) STIPULATED PROTECTIVE
Defendant.) ORDER
)

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to

1 discovery and that the protection it affords from public disclosure and use extends
2 only to the limited information or items that are entitled to confidential treatment
3 under the applicable legal principles. The parties further acknowledge, as set forth
4 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
5 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
6 procedures that must be followed and the standards that will be applied when a party
7 seeks permission from the court to file material under seal.

8 B. GOOD CAUSE STATEMENT

9 This action is likely to involve, customer and pricing lists and other
10 valuable research, development, commercial, financial, and/or proprietary
11 information for which special protection from public disclosure and from use for
12 any purpose other than prosecution of this action is warranted. Such confidential
13 and proprietary materials and information consist of, among other things,
14 confidential business or financial information, information regarding confidential
15 business practices, or other confidential research, development, or commercial
16 information (including information implicating privacy rights of third parties),
17 information otherwise generally unavailable to the public, or which may be
18 privileged or otherwise protected from disclosure under state or federal statutes,
19 court rules, case decisions, or common law. Accordingly, to expedite the flow of
20 information, to facilitate the prompt resolution of disputes over confidentiality of
21 discovery materials, to adequately protect information the parties are entitled to keep
22 confidential, to ensure that the parties are permitted reasonable necessary uses of
23 such material in preparation for and in the conduct of trial, to address their handling
24 at the end of the litigation, and serve the ends of justice, a protective order for such
25 information is justified in this matter. It is the intent of the parties that
26 information will not be designated as confidential for tactical reasons and that
27 nothing be so designated without a good faith belief that it has been maintained in
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1 a confidential, non-public manner, and there is good cause why it should not be
2 part of the public record of this case.

3 2. DEFINITIONS

4 2.1 Action: *Prohbtd Media, Inc. v. VMR Products, LLC d/b/a V2 Cigs,*
5 *LLC*, Case No. 2:18-cv-05593-JAK-SK (C.D. California).

6 2.2 Challenging Party: a Party or Non-Party that challenges the designation
7 of information or items under this Order.

8 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
9 how it is generated, stored or maintained) or tangible things that qualify for
10 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
11 the Good Cause Statement.

12 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
13 their support staff).

14 2.5 Designating Party: a Party or Non-Party that designates information or
15 items that it produces in disclosures or in responses to discovery as
16 “CONFIDENTIAL.”

17 2.6 Disclosure or Discovery Material: all items or information, regardless
18 of the medium or manner in which it is generated, stored, or maintained (including,
19 among other things, testimony, transcripts, and tangible things), that are produced or
20 generated in disclosures or responses to discovery in this matter.

21 2.7 Expert: a person with specialized knowledge or experience in a
22 matter pertinent to the litigation who has been retained by a Party or its counsel to
23 serve as an expert witness or as a consultant in this Action.

24 2.8 House Counsel: attorneys who are employees of a party to this Action.
25 House Counsel does not include Outside Counsel of Record or any other outside
26 counsel.

27 2.9 Non-Party: any natural person, partnership, corporation, association, or
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1 other legal entity not named as a Party to this action.

2 2.10 Outside Counsel of Record: attorneys who are not employees of a
3 party to this Action but are retained to represent or advise a party to this Action and
4 have appeared in this Action on behalf of that party or are affiliated with a law firm
5 which has appeared on behalf of that party, and includes support staff.

6 2.11 Party: any party to this Action, including all of its officers, directors,
7 employees, consultants, retained experts, and Outside Counsel of Record (and their
8 support staffs).

9 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
10 Discovery Material in this Action.

11 2.13 Professional Vendors: persons or entities that provide litigation support
12 services (e.g., photocopying, videotaping, translating, preparing exhibits or
13 demonstrations, and organizing, storing, or retrieving data in any form or medium)
14 and their employees and subcontractors.

15 2.14 Protected Material: any Disclosure or Discovery Material that is
16 designated as “CONFIDENTIAL.”

17 2.15 Receiving Party: a Party that receives Disclosure or Discovery
18 Material from a Producing Party.

19 3. SCOPE

20 The protections conferred by this Stipulation and Order cover not only
21 Protected Material (as defined above), but also (1) any information copied or
22 extracted from Protected Material; (2) all copies, excerpts, summaries, or
23 compilations of Protected Material; and (3) any testimony, conversations, or
24 presentations by Parties or their Counsel that might reveal Protected Material.

25 Any use of Protected Material at trial shall be governed by the orders of the
26 trial judge. This Order does not govern the use of Protected Material at trial.

1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a court order otherwise directs. Final disposition shall be
5 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
6 or without prejudice; and (2) final judgment herein after the completion and
7 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
8 including the time limits for filing any motions or applications for extension of time
9 pursuant to applicable law.

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

12 Each Party or Non-Party that designates information or items for protection
13 under this Order must take care to limit any such designation to specific material
14 that qualifies under the appropriate standards. The Designating Party must
15 designate for protection only those parts of material, documents, items, or oral or
16 written communications that qualify so that other portions of the material,
17 documents, items, or communications for which protection is not warranted are not
18 swept unjustifiably within the ambit of this Order.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations
20 that are shown to be clearly unjustified or that have been made for an improper
21 purpose (e.g., to unnecessarily encumber the case development process or to impose
22 unnecessary expenses and burdens on other parties) may expose the Designating
23 Party to sanctions.

24 If it comes to a Designating Party's attention that information or items that it
25 designated for protection do not qualify for protection, that Designating Party must
26 promptly notify all other Parties that it is withdrawing the inapplicable designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (see, e.g., second paragraph of section 5.2(a) and section 5.2(b) below), or
3 as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies
4 for protection under this Order must be clearly so designated before the material is
5 disclosed or produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (e.g., paper or electronic
8 documents, but excluding transcripts of depositions or other pretrial or trial
9 proceedings), that the Producing Party affix at minimum, the legend
10 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
11 contains Protected Material. If only a portion or portions of the material on a page
12 qualifies for protection, the Producing Party also must clearly identify the protected
13 portion(s) (e.g., by making appropriate markings in the margins).

14 A Party or Non-Party that makes original documents available for inspection
15 need not designate them for protection until after the inspecting Party has indicated
16 which documents it would like copied and produced. During the inspection and
17 before the designation, all of the material made available for inspection shall be
18 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
19 documents it wants copied and produced, the Producing Party must determine which
20 documents, or portions thereof, qualify for protection under this Order. Then,
21 before producing the specified documents, the Producing Party must affix the
22 “CONFIDENTIAL legend” to each page that contains Protected Material. If only
23 a portion or portions of the material on a page qualifies for protection, the
24 Producing Party also must clearly identify the protected portion(s) (e.g., by making
25 appropriate markings in the margins).

26 (b) for deposition testimony or other pretrial testimony, designation of the
27 portion of the transcript (including exhibits) which contains Protected Material shall
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1 be made (i) by a statement on the record at the time of such disclosure by counsel
2 for the deponent that such testimony is CONFIDENTIAL under this Order, or (ii) by
3 written notice, sent by Outside Counsel of Record for the deponent to Outside
4 Counsel of Record for all Parties on or before the end of the thirty (30) days after
5 receiving a copy of the transcript thereof. All deposition transcripts prepared in the
6 action shall be deemed to be Protected Material in their entirety until the end of
7 thirty (30) days after their receipt by counsel for the Designating Party. Thereafter,
8 only those portions of the deposition transcripts prepared in the Action which have
9 been designated by the Designating Party as Protected Material will be treated as
10 such pursuant to the provisions of this Order.

11 (c) for information produced in some form other than documentary and
12 for any other tangible items, that the Producing Party affix in a prominent place on
13 the exterior of the container or containers in which the information is stored the
14 legend "CONFIDENTIAL." If only a portion or portions of the
15 information warrants protection, the Producing Party, to the extent practicable,
16 shall identify the protected portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
18 failure to designate qualified information or items does not, standing alone, waive
19 the Designating Party's right to secure protection under this Order for such material.
20 Upon timely correction of a designation, the Receiving Party must make reasonable
21 efforts to assure that the material is treated in accordance with the provisions of this
22 Order.

23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
25 designation of confidentiality at any time that is consistent with the Court's
26 Scheduling Order.

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
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1 resolution process under Local Rule 37.1 *et seq.*

2 6.3 The burden of persuasion in any such challenge proceeding shall be on
3 the Designating Party. Frivolous challenges, and those made for an improper
4 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
5 parties) may expose the Challenging Party to sanctions. Unless the Designating
6 Party has waived or withdrawn the confidentiality designation, all parties shall
7 continue to afford the material in question the level of protection to which it is
8 entitled under the Producing Party's designation until the Court rules on the
9 challenge.

10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is
12 disclosed or produced by another Party or by a Non-Party in connection with this
13 Action only for prosecuting, defending, or attempting to settle this Action. Such
14 Protected Material may be disclosed only to the categories of persons and under the
15 conditions described in this Order. When the Action has been terminated, a
16 Receiving Party must comply with the provisions of section 13 below (FINAL
17 DISPOSITION).

18 Protected Material must be stored and maintained by a Receiving Party at a
19 location and in a secure manner that ensures that access is limited to the persons
20 authorized under this Order.

21 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
22 otherwise ordered by the court or permitted in writing by the Designating Party, a
23 Receiving Party may disclose any information or item designated
24 "CONFIDENTIAL" only to:

25 (a) the Receiving Party's Outside Counsel of Record in this Action, as
26 well as employees of said Outside Counsel of Record to whom it is reasonably
27 necessary to disclose the information for this Action;

1 (b) the officers, directors, and employees (including House Counsel) of
2 the Receiving Party to whom disclosure is reasonably necessary for this Action;

3 (c) Experts (as defined in this Order) of the Receiving Party to whom
4 disclosure is reasonably necessary for this Action and who have signed the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (d) the court and its personnel;

7 (e) court reporters and their staff;

8 (f) professional jury or trial consultants, mock jurors, and Professional
9 Vendors to whom disclosure is reasonably necessary for this Action and who have
10 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (g) the author or recipient of a document containing the Protected
12 Material or a custodian or other person who otherwise possessed or knew the
13 Protected Material ;

14 (h) during their depositions, witnesses and attorneys for witnesses, in the
15 Action to whom disclosure is reasonably necessary provided: (1) the deposing
16 party requests that the witness sign the “Acknowledgment and Agreement to Be
17 Bound” form attached as Exhibit A hereto; and (2) they will not be permitted to
18 keep any Protected Material unless otherwise agreed by the Designating Party or
19 ordered by the court. Pages of transcribed deposition testimony or exhibits to
20 depositions that reveal Protected Material may be separately bound by the court
21 reporter and may not be disclosed to anyone except as permitted under this
22 Stipulated Protective Order; and

23 (i) any mediator or settlement officer, and their supporting personnel,
24 mutually agreed upon by any of the parties engaged in settlement discussions.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall
7 include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to
9 issue in the other litigation that some or all of the material covered by the subpoena
10 or order is subject to this Protective Order. Such notification shall include a copy of
11 this Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued
13 by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with
15 the subpoena or court order shall not produce any information designated in this
16 action as “CONFIDENTIAL” before a determination by the court from which the
17 subpoena or order issued, unless the Party has obtained the Designating Party’s
18 permission. The Designating Party shall bear the burden and expense of seeking
19 protection in that court of its confidential material and nothing in these provisions
20 should be construed as authorizing or encouraging a Receiving Party in this Action
21 to disobey a lawful directive from another court.

22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
23 PRODUCED IN THIS LITIGATION

24 (a) The terms of this Order are applicable to information produced by a
25 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
26 produced by Non-Parties in connection with this litigation is protected by the
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1 remedies and relief provided by this Order. Nothing in these provisions should be
2 construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In order to provide the Parties an adequate opportunity to designate
4 information as “CONFIDENTIAL,” all information produced in this litigation by a
5 Non-Party shall be deemed “CONFIDENTIAL” whether or not stamped with that
6 legend, for a period of 5 days following production. Furthermore, the inadvertent
7 failure by any Party to designate information produced by Non-Parties as
8 “CONFIDENTIAL” within that 5-day period shall not waive a Party’s right to later
9 so designate such information with prospective effect, so long as the designation
10 correction is made in a timely fashion, consistent with Section 5.3 of this Order.
11 The Receiving Party may challenge the designation of the information as provided
12 in Section 6 of this Order. Notwithstanding any other provision in this section, any
13 Party receiving documents from a Non-Party shall, within five business days, make
14 them available to the other Party. That party shall then have five days from the
15 time of its receipt to make the designations or it waives its right to so designate such
16 information.

17 (c) In the event that a Party is required, by a valid discovery request, to
18 produce a Non-Party’s confidential information in its possession, and the Party is
19 subject to an agreement with the Non-Party not to produce the Non-Party’s
20 confidential information, then the Party shall:

21 (1) promptly notify in writing the Requesting Party and the Non-
22 Party that some or all of the information requested is subject to a confidentiality
23 agreement with a Non-Party;

24 (2) promptly provide the Non-Party with a copy of the Stipulated
25 Protective Order in this Action, the relevant discovery request(s), and a reasonably
26 specific description of the information requested; and
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1 (3) make the information requested available for inspection by the
2 Non-Party, if requested.

3 (d) If the Non-Party fails to seek a protective order from this court within
4 14 days of receiving the notice and accompanying information, the Receiving Party
5 may produce the Non-Party's confidential information responsive to the discovery
6 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
7 not produce any information in its possession or control that is subject to the
8 confidentiality agreement with the Non-Party before a determination by the court.
9 Absent a court order to the contrary, the Non-Party shall bear the burden and
10 expense of seeking protection in this court of its Protected Material.

11 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

12 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
13 Protected Material to any person or in any circumstance not authorized under this
14 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
15 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
16 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
17 persons to whom unauthorized disclosures were made of all the terms of this Order,
18 and (d) request such person or persons to execute the Acknowledgment and
19 Agreement to Be Bound" that is attached hereto as Exhibit A.

20 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
21 PROTECTED MATERIAL

22 This Order is intended to provide the full protection afforded by Federal Rule
23 of Evidence 502(d), providing that "A Federal court may order that the privilege or
24 protection is not waived by disclosure connected with the litigation pending before
25 the court – in which event the disclosure also is not a waiver in any other Federal or
26 State proceeding."

1 If a Producing Party inadvertently or mistakenly produces privileged material,
2 such production shall in no way prejudice or otherwise constitute a waiver of, or
3 estoppel as to, any claim of privilege, work-product immunity, protection pursuant
4 to the joint defense or common interest doctrine, or any other applicable privilege
5 for the inadvertently produced document or any other document covering the same
6 or similar subject matter under applicable law, including Federal Rule of Evidence
7 502. When a Producing Party gives notice to Receiving Parties that certain
8 inadvertently produced material is subject to a claim of privilege or other protection,
9 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
10 Procedure 26(b)(5)(B).

11 12. MISCELLANEOUS

12 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
13 person to seek its modification by the Court in the future.

14 12.2 Right to Assert Other Objections. By stipulating to the entry of this
15 Protective Order no Party waives any right it otherwise would have to object to
16 disclosing or producing any information or item on any ground not addressed in this
17 Stipulated Protective Order. Similarly, no Party waives any right to object on any
18 ground to use in evidence of any of the material covered by this Protective Order.

19 12.3 Filing Protected Material. A Party that seeks to file under seal any
20 Protected Material must comply with Civil Local Rule 79-5. Protected Material
21 may only be filed under seal pursuant to a court order authorizing the sealing of the
22 specific Protected Material at issue. If a Party's request to file Protected Material
23 under seal is denied by the court, then the Receiving Party may file the information
24 in the public record unless otherwise instructed by the court.

25 13. FINAL DISPOSITION

26 After the final disposition of this Action, as defined in paragraph 4, within 60
27 days of a written request by the Designating Party, each Receiving Party must return
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1 all Protected Material to the Producing Party or destroy such material. As used in
2 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
3 summaries, and any other format reproducing or capturing any of the Protected
4 Material. Whether the Protected Material is returned or destroyed, the Receiving
5 Party must submit a written certification to the Producing Party (and, if not the same
6 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
7 (by category, where appropriate) all the Protected Material that was returned or
8 destroyed and (2) affirms that the Receiving Party has not retained any copies,
9 abstracts, compilations, summaries or any other format reproducing or capturing any
10 of the Protected Material.

11 Notwithstanding this provision, Counsel are entitled to retain an archival copy
12 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
13 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
14 work product, and consultant and expert work product, even if such materials
15 contain Protected Material. Any such archival copies that contain or constitute
16 Protected Material remain subject to this Protective Order as set forth in Section 4
17 (DURATION).

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1 14. VIOLATION

2 Any violation of this Order may be punished by any and all appropriate measures
3 including, without limitation, contempt proceedings and/or monetary sanctions.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5
6 Dated: September 26, 2018

7 By: /s/ Kevin R. Lussier

8 Kevin R. Lussier
9 VEATCH CARLSON, LLP
10 Jason D. Jones
11 FROSS ZELNICK LEHRMAN & ZISSU,
12 P.C.
13 Attorneys for Plaintiff
14 PROHBTD MEDIA, INC.

15 -and-

16 By: /s/ Ashley D. Posner

17 Ashley D. Posner
18 POSNER LAW CORPORATION
19 Attorneys for Defendant
20 VMR PRODUCTS, LLC D/B/A V2
21 CIGS, LLC

22 ECF CERTIFICATION

23 The filing attorneys attest that they have obtained concurrence regarding the filing
24 of this document from the other signatory to this document.

25 /s/ Kevin R. Lussier

26 GOOD CAUSE APPEARING, IT IS SO ORDERED.

27 DATED: September 26, 2018

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Honorable Steve Kim
United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order
that was issued by the United States District Court for the Central District of
California in the case of *Prohbt Media, Inc. v. VMR Products, LLC d/b/a V2 Cigs,*
LLC, Case No. 2:18-cv-05593-JAK-SK (C.D. California). I agree to comply with
and to be bound by all the terms of this Stipulated Protective Order and I understand
and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____ [print or
type full name] of _____ [print or
type full address and telephone number] as my California agent for service of
process in connection with this action or any proceedings related to enforcement of
this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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